## REMARKS

Claims 1-11 and 14-28 are pending in the present application. Claim 14 has been allowed, and claims 1-11 and 15-28 have been rejected.

By the present amendment, Claims 12 and 13 have been canceled to expedite prosecution. No claims were amended; and no claims were added. Applicants believe the claims currently in the case patentably distinguish over the cited art, and that this application is in condition for allowance. Reconsideration of the rejection is, accordingly, respectfully requested in view of the above amendments and the following comments.

## I. Information Disclosure Statement

The Examiner indicates that the Information Disclosure Statement filed on October 19, 2000, has not been considered because the Examiner was unable to find the supplied copies of the references that were cited in the Information Disclosure Statement.

According to records in the file of the present application, copies of the references cited in the Information Disclosure Statement were, in fact, submitted with the filed Information Disclosure Statement. A further copy of the Information Disclosure Statement, including copies of the references cited in the Statement, is enclosed with this Amendment. It is respectfully requested that the Examiner consider the cited references and acknowledge his consideration of the cited references by initialing and returning a copy of the "List of Prior Art Cited by Applicant" with the next Office communication.

## II. 35 U.S.C. § 102, Anticipation

The Examiner has rejected claims 12 and 13 under 35 U.S.C. § 102(e) as being anticipated by Mo et al. (U.S. Patent No. 6,693,909).

By the present amendment, Claims 12 and 13 have been canceled to expedite prosecution.

Therefore, the rejection of claims 12 and 13 under 35 U.S.C. § 102(e) has been overcome.

## III. 35 U.S.C. § 103, Obviousness

The Examiner has rejected claims 1-5, 7-11, 15-19 and 21-28 under 35 U.S.C. § 103(a) as being unpatentable over Phaal (U.S. Patent No. 6,055,564) in view of Mo et al. In addition, the Examiner has rejected claims 6 and 20 under 35 U.S.C. § 103(a) as being unpatentable over Phaal and Mo et al., further in view of Applicants' admitted prior art. These rejections are respectfully traversed.

In rejecting the claims the Examiner states:

> Phaal teaches the transmission of a priority indicator in a message in order to indicate to an application handling the message to give it priority (Column 2, lines 43-57). Phaal does not teach transmitting the messages over transport packets with additional priority indicators. Phaal is directed to applications involving the world-wide web (column 1, lines 12-16) and using the Internet Protocol column 1, lines 21-24). Mo is directed at improving Internet Protocol networks (column 1, lines 41-52) including the Internet (column 3, lines 62-67) by providing priority indicators within the transport packet for giving priority in processing at transport nodes (priority indicators are CoS parameters, column 2, lines 55-61). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine improvements to two areas of data communications since a skilled artisan would have been motivated by the desire to improve communication systems by combining the two teachings for the reason that the Internet is the transport mechanism for accessing the world-wide web and that Phaal improves processing in the world-wide web and Mo improves processing on the transport mechanism on the Internet.

Office Action dated March 15, 2004, pages 3 and 4.

Claim 1 of the present application reads as follows:

> 1. A method in a communications system for processing control messages in a packet-based portion of the communications system, the method comprising:
> placing a priority indicator in a control message to indicate to an application handling the control messages that the control message is to be given priority in processing; and
> placing a priority indicator in a header of a packet transporting the control message within the packet-based portion of the communications system to indicate to a node receiving the packet that the packet is to be given priority in processing.

Phaal discloses a system by which messages to be transmitted can be prioritized based on either function or context, for example, based on different processing tasks or different destinations (column 2, lines 8-12). In Phaal, as noted by the Examiner, incoming messages are allocated according to a "priority indicator" associated with each message. The Examiner acknowledges that:

> Phaal does not distinguish between control and data messages since the functions associated with a message can be control as in commercial transactions or data as in browsing, column 1, lines 28-40.

Office Action dated March 15, 2004, page 4.

The Examiner then states, however, that Phaal discloses:

> placing a priority indicator in a control message to indicate to an application handling the control messages that the control message is to be given priority in processing (Phaal, column 2, lines 43-57).

Office Action dated March 15, 2004, page 4.

Column 2, lines 43-57 of Phaal reads as follows:

> One form of the invention provides a host processing system which allocates incoming messages according to an indicator of priority or class ("priority indicator") associated with each message; the indicator can be assigned by a host, by an admission control system, by the client itself, or by the message's ultimate destination. In this form of the invention, messages having a relatively high associated level of priority received favored treatment over messages having lower priority. For example, messages in a queue can be reordered according to priority. Messages can also be, when host processing resources become scarce, admitted or rejected based upon priority. The indicator can be a specific alphanumeric field associated with each message, and it can also be in the form of presence or absence of a specific field (indicating a priority and non-priority, respectively).

The above paragraph nowhere states that a priority indicator is placed in a control message. The paragraph states only that a priority indicator is associated with each message (emphasis added). Phaal does not disclose placing a priority indicator in a

control message to indicate to an application handling the control messages that the control message is to be given priority in processing, as recited in claim 1.

The Examiner then asserts that Mo discloses, in column 4, lines 45-61, placing a priority indicator in a header of a packet transporting the control message within the packet-based portion of the communications system to indicate to a node receiving the packet that the packet is to be given priority in processing.

Column 4, lines 45-61 of Mo reads as follows:

> To support voice, video, and other real-time or time-sensitive applications, the transport network **10** provides class of service (CoS) capabilities. In one embodiment, all IP packets are mapped to one of three priority levels, as they enter the transport network **10**. In this embodiment, guaranteed traffic has reserved bandwidth and is guaranteed to be transported within a defined time delay. Control flow traffic is also reserved and guaranteed, but the network **10** does not guarantee delivery time delay. Best effort traffic does not have reserved bandwidth and delivery is not guaranteed by the network **10**. By distinguishing and prioritizing traffic based on its priority, including CoS and/or service level agreement (SLA), and/or other suitable indication of importance or delivery constraints, the transport network **10** is able to deliver time-sensitive traffic within tight time constraints by delaying and/or dropping best effort traffic and other low priority traffic.

Although Mo describes that messages are prioritized based on CoS, the above paragraph nowhere states that CoS is a priority indicator placed in a header of a packet transporting a control message within the packet-based portion of the communications system to indicate to a node receiving the packet that the packet is to be given priority in processing, as recited in claim 1.

Accordingly, Phaal does not disclose "placing a priority indicator in a control message to indicate to an application handling the control messages that the control message is to be given priority in processing", and Mo does not disclose "placing a priority indicator in a header of a packet transporting the control message within the packet-based portion of the communications system to indicate to a node receiving the packet that the packet is to be given priority in processing". Therefore, the combination of Phaal and Mo do not teach or suggest the present invention as recited in claim 1, and claim 1 is not unpatentable in view of the references.

Furthermore, there is no teaching in either Phaal or Mo to suggest combining the references as proposed by the Examiner. It is well-known in the Patent Law that an Examiner, in rejecting a claim as being obvious over prior art, has the burden of establishing a *prima facie* case of obviousness. The requirements for establishing a *prima facie* case of obviousness in view of a combination of references are set forth in detail in Section 2142 of the MPEP and include the requirements that the Examiner explain in detail why the combination of the teachings is proper, that the Examiner provide a clear and convincing line of reasoning as to why an artisan would have found the claimed invention obvious in light of the teachings of the references, and that the Examiner provide a showing that it is the prior art and not the Applicants' own disclosure that teaches the combination asserted by the Examiner.

Neither Phaal nor Mo suggests any reason to place a priority indicator in both a control message and in a packet transporting the control message. Only the present application contains any such disclosure. In the absence of any such disclosure in the references, it would not be obvious to one of ordinary skill in the art to combine the references as proposed by the Examiner.

Therefore, Applicants submit that the Examiner has not satisfied the requirements for establishing a *prima facie* case of obviousness with respect to claim 1, and that claim 1 is not obvious over Phaal in view of Mo for this reason as well.

Claims 2-4 depend from and further restrict claim 1 and should also be allowable in their present form, at least by virtue of their dependency.

Independent claim 5 reads as follows:

> 5. A method in a communications system for processing control messages for a session in a packet-based network within the communications system, the method comprising:
> setting an indicator for a control message handling the session within the communications system through the packet-based network; and
> sending the control message to the packet-based network, wherein the packet-based network provides preferential processing of the control message in managing the session based on the indicator.

As discussed above, neither reference discloses prioritizing control messages, nor does either reference disclose "setting an indicator for a control message handling the

session within the communications system through the packet-based network". The Examiner refers to column 2, lines 43-57 of Phaal, reproduced above, as containing such a disclosure. The paragraph, however, refers only to a priority indicator associated with a message, and does not disclose a control message and does not disclose setting an indicator for a control message.

Claim 5, accordingly, should also be allowable in its present form, together with claims 7-11 dependent thereon.

Independent claims 15 and 26 contain limitations similar to claim 1 and should be allowable for substantially the same reasons as discussed above with respect to claim 1, together with claims 16-18 dependent on claim 15.

Independent claims 19 and 27 contain limitations similar to claim 5 and should be allowable for substantially the same reasons as discussed above with respect to claim 5, together with claims 21-25 dependent on claim 19 and claim 28 dependent on claim 27.

Therefore the rejection of claims 1-5, 7-11, 15-19 and 21-28 under 35 U.S.C. § 103(a) has been overcome.

Claims 6 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Phaal and Mo et al., and further in view of Applicants' admitted prior art. Claims 6 and 20 depend from and further restrict independent claims 5 and 19, respectively, and should be allowable in their present form, at least by virtue of their dependency.

Therefore the rejection of claims 6 and 20 under 35 U.S.C. § 103(a) has been overcome.
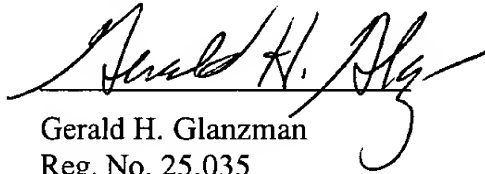
## IV.  Conclusion

For all the above reasons, claims 1-11 and 15-28 are believed to be allowable in their present form and this application is believed to be in condition for allowance. It is accordingly, respectfully requested that the Examiner so find and issue a Notice of Allowance in due course.

The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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